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HUSBAND AND WIFE--ALIENATION OF AFFECTIONS—JUSTIFICATION.—MILLER V. PEARCE, 85 ATL. REP., 620.—*Held,* an action by a wife for the alienation of the affections of her husband, is not defeated by the fact that the wife was entirely estranged from her husband before his acquaintance with defendant, but that fact was admissible only in mitigation of damages.

At common law the wife was not allowed to sue for the alienation of her husband's affections, *Van Arnam v. Ayres,* 67 Barb., 544; *Duffles v. Duffles,* 76 Wis., 374; *contra, Bennett v. Bennett,* 116 N. Y., 584; though some cases held she had the right to sue but the right was in abeyance because of coverture. *Smith v. Smith,* 98 Tenn., 101. Under present State statutes, however, one sex is not accorded relief denied reciprocally to another. *Schouler, Husband and Wife,* Chap. 3, page 532; *Sims v. Sims,* 76 Atl., 1063; *Keen v. Keen,* 49 Ore., 362. The only States now holding the contrary are Maine and Wisconsin. *Morgan v. Martin,* 92 Me., 190; *Duffles v. Duffles,* 76 Wis., 374. This right to sue accrues even if the marriage has not been physically consummated, *Cochran v. Cochran,* 111 N. Y. S., 588; and in an alienation suit the husband's conjugal affection is presumed. *Gregg v. Gregg,* 37 Ind. App., 210. Even lack of affection, though, is no bar to the action, *Morris v. Warwick,* 42 Wash., 480; nor need the defendant's acts be the sole cause of the alienation of affections. *Rath v. Rath,* 2 Neb., 600. Furthermore, the plaintiff need not show that the alienation of affections was committed before the husband's desertion of his wife. *Humphrey v. Pope,* 122 Cal., 253. The wife's right, then, to sue for the alienation of her husband's affections, just as he always might sue for the alienation of hers, seems thoroughly established. Of the three States that held the contrary, Maine and Wisconsin have not passed on the point recently, and New Jersey, in *Sims v. Sims,* cited *supra,* in July, 1910, overruled its decision in *Hodge v. Wetzler,* 69 N. J. L., and is now in accord with the majority opinion.

LIBEL—CRIMINAL RESPONSIBILITY—PLACE OF PUBLICATION.—PEOPLE V. BIHLER, 139 N. Y. S., 819.—A libelous letter is published both in the place where it is posted in the mail and in the place to which it is addressed, the postmark being *prima facie* evidence that the letter was in the postoffice on the date of the postmark; so that the publication of a libelous letter addressed to one in Switzerland was complete when deposited in the postoffice in New York city with postage prepaid for its transmission to Switzerland.

In libel there must be a publication, *Prescott v. Tousey,* 50 N. Y. S., 12, but the term "publication" is ambiguous. *Townshend, (Libel and Slander),* page 83. It has been held not to have the same meaning in criminal and civil prosecutions. *Watrous v. Chalker,* 7 Conn., 266, held it was criminal libel to send the libel to the one defamed; *contra, Lyle v. Clason,* 1 Caines, 581; *Wilcox v. Moon,* 64 Vt., 450; *McCarlie v. Atkinson,* 77 Miss., 594; *State v. Syphrett,* 2 S. E. Rep., 624, holding there must be, in criminal libel, as in civil libel, publication to a third person. *Clark, Criminal Law,* page 241, sustains the Connecticut doctrine on the ground that the

gist of criminal libel is the tendency to breach of peace. Mere writing is not publication, *Weir v. Hoss,* 6 Ala., 881; printing a book is not publication, *Jewelers' Agency v. Publishing Co.,* 32 N. Y. S., 41; nor is posting a writing and taking it down before it is read, publication. 1 Stark. Rep., 471. However, it has been held that mailing a letter is publication. *Smith v. State,* 32 Tex., 594; *Mankins v. State,* 41 Tex. Cr. Rep., 662; *Watrous v. Chalker, supra.* The leading case, *Rex v. Burdett,* 3 B. & A., 717, held that mailing was a publication because there was no *locus poenitentiae.* On the other hand, it has been held that there was no publication till the letter was received and read, *McCarlie v. Atkinson, supra; Fonville v. McNease,* 1 Dudd. (S. C.), 303, *semble;* and that there is no publication until there is a communication to a person who understands it. *Prescott v. Tousey, supra.* Chapter 245 of the Penal Code of New York, 1903, based on *Rex v. Burdette, supra,* reads, "to sustain charge of publishing libel * * * it is enough that defendant part with immediate custody". The principal case is in accord with the statute and with the weight of authority at common law, which favors the doctrine that mailing is publication. Academically at least, this seems a doubtful doctrine, as frequently a letter may be withdrawn after mailing; or through accident, negligence, or design may never reach its destination.

MASTER AND SERVANT—UNLAWFUL EMPLOYMENT OF CHILD—MISSTATEMENT AS TO AGE OF CHILD.—DESOTO COAL, MINING & DEVELOPMENT CO. V. HILL, 60 So. (ALA.), 583.—*Held,* that where a mining company employs a boy under fourteen years of age in its mine in violation of Code 1907, Sec. 1035, it is liable for injuries resulting to him from the employment, and incident to any risks of the master's business, though not the proximate result of any act or omission of the boy in the discharge of the duty assigned to him, and though he or his parent may have misstated his age and led the master to believe him to be over the prohibited age; the mining company being in effect an insurer of the boy's age when it employs him.

The doctrine is well established that the violation of a statute forbidding the employment in a factory of a child under a certain age is negligence *per se. Starnes v. Albion Mfg. Co.,* 147 N. C., 556; *Brower v. Locke,* 31 Ind. App., 353; *Cooke v. Lalance Grosjean Mfg. Co.,* 33 Hun. (N. Y.), 351. The majority of the decisions lay down the same rule as in the principal case that misstatement of the age of the child, by the child or his parents, does not affect the liability of his employer. *Beghold v. Auto Body Co.,* 149 Mich., 14; *Norman v. Virginia-Pocahontas Coal Co.,* 69 S. E., 857 (W. Va.); *Glucina v. F. H. Goss Brick Co.,* 115 Pac., 843 (Wash.). The New York Courts, on the other hand, hold that an employer is not guilty of negligence *per se* for injury to a child employed contrary to the statute unless the employer knew that the child was under the probited age, or unless his appearance was such as to put him upon inquiry with respect thereto; *Stenson v. Flick Construction Co.,* 146 App. Div., 66; so that if the plaintiff falsely stated his age and the defendant was justified in believing him, the employment of the child would not be